GOVERNMENT OF ANDHRA PRADESH
ABSTRACT

Suits - Supreme Court of India W.P (C) Nos 490 of 2005 and 231 of 2005 – order dated 10.07.2013 declaring Sub section 4 of section 8 of Representation of People the Act, 1951 as *ultra vires* the Constitution of India – Providing mechanism for tracking and reporting the cases of conviction of sitting MPs/MLAs/MLCs across courts at all level in the State – Orders - Issued.

GENERAL ADMINISTRATION (ELECTIONS.D) Department

G.O Ms No. 15 Dated:15.01.2014
Read the following

1. The Judgment dated 10.07.2013 of the Hon'ble Supreme Court of India in W.P (C) Nos 490 of 2005 and 231 of 2005.
2. The Election Commission of India Letter No. 509/127/2005/RCC, dated: 07.08.2013.
3. The Election Commission of India Letter No. 3/ER/2013/SDR Vol.II, dated: 06.09.2013.

ORDER:-

The Hon'ble Supreme Court of India in its Judgment dated 10.07.2013 in W.P (C) Nos. 490 of 2005 and 231 of 2005 held that Sub section (4) of Section 8 of the Representation of the People Act, 1951 as *ultra vires* the Constitution of India. The court further held that if any sitting Member of Parliament or a State Legislature is convicted of any of the offences mentioned in sub-sections(1), (2) and (3) of Section 8 of the Act and by virtue of such conviction and/or sentence suffers the disqualifications mentioned in sub-sections (1), (2) and (3) of Section 8 of the Act after the pronouncement of this judgment, his membership of Parliament or the State Legislature, as the case may be, will not be saved by sub-section (4) of Section 8 of the said Act which we have by this judgment declared as *ultra vires* the Constitution notwithstanding that he files the appeal or revision against the conviction and / or sentence.

2. The Election Commission of India while forwarding the above judgment of the Hon'ble Supreme Court of India informed that if any sitting member of Parliament or a State Legislature is convicted and/or sentenced to imprisonment / fine after this judgment and if the provisions of sub-sections (1), (2) and (3) of Section 8 of the Representation of People the Act, 1951 are attracted, he/she will be disqualified from membership forthwith and his/her seat will become vacant.

3. In order to monitor such cases, it is necessary to have a system in place so that cases of conviction of sitting members of Parliament and State Legislature are immediately communicated to the Speaker/Chairman of the House concerned and to the Election Commission. The Commission, therefore, requested to devise and provide for a fool proof mechanism by involving the office of the Advocate General / Directorate of Prosecution and other channel if any for tracking and promptly reporting to the Speaker/Chairman of the House concerned and the Commission about the cases of conviction of sitting MPs/MLAs/MLCs across the courts at all levels in the State. In order to ensure that cases do not go unnoticed, the Commission desired that the State government may send to the Commission a monthly report about cases of conviction, if any of sitting Members of Parliament or State Legislature in the statement prescribed by the 15th of every month through the Chief Electoral Officer of the State.

4. The matter has been examined and the following orders are issued with regard to reporting of the cases relating to conviction of sitting MPs/MLAs/MLCs across the courts at all levels in the state:

1. The Chief Electoral Officer & Ex –Officio, Principal Secretary to Government, General Administration (Elections) Department will be the Nodal Officer for reporting the cases of conviction of sitting MPs/MLAs/MLCs across the courts at all levels in the State.

(P.T.O)

2. The Registrar, Hon'ble High Court of A.P., be requested to re-iterate the instructions already issued to the subordinate courts all over the State along with the formats prescribed (Annexure) to report the conviction of the Members of Parliament and the State Legislature to the Speakers / Chairman of the respective Houses promptly with a copy to Nodal Officer. (The Secretary, L.A.&J, Law Dept, shall address to the Registrar of Hon'ble High Court of A.P in this regard.)

3. When a Member is arrested on the criminal charge or for a criminal offence or is sentenced to imprisonment by a Court or is detained under an executive order, the committing Judge, Magistrate or executive authority as the case may be, shall immediately intimate such fact to the Speaker of the Andhra Pradesh Legislative Assembly, Chairman, Andhra Pradesh Legislative Council and also to the Speaker of the Parliament and Chairman of Rajya Sabha indicating the reasons for the arrest, detention or conviction, as the case may be, as also the place of detention or imprisonment of the member in the appropriate form set out in the Schedule-1 of Rules of Procedure and conduct of Business in Andhra Pradesh Legislative Assembly. Further, when a member is released on bail pending an appeal or otherwise released such fact shall also be intimated to the Speaker or chairman as the case may be by the Authority concerned in the appropriate form set out in the said Schedule-1.

4. The Advocate on Record, Hon'ble Supreme Court of India and the Public Prosecutors of the Hon'ble High Court shall report all such cases of conviction in respect of the Members of Parliament and the State Legislature to the Nodal Officer within 24 hours. (The Secretary, L.A.&J, Law Dept., will address the Advocate on Record and Public Prosecutors, in the High Court.)

5. The Public Prosecutors / Asst. Public Prosecutors of all the Courts shall report all such cases of conviction in respect of the Members of Parliament and the State Legislature in the State to the Director of Prosecutions and in turn the Director of Prosecutions shall submit such reports to the Nodal Officer within 24 hours.

6. The DGP will obtain the reports from all the SPs / Commissioners of Police as soon as conviction orders are passed by the Hon'ble Courts against the sitting Members of Parliament and the State Legislature in the State and shall report to the Nodal Officer within 24 hours.

7. The Nodal Officer after receipt of all the cases of conviction, if any, of the sitting Members of Parliament/State Legislature will submit to the Chief Secretary. After approval of the Chief Secretary, the Nodal Officer will submit the report to the Election Commission.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

P.K.MOHANTY,
CHIEF SECRETARY TO GOVERNMENT

To
The Chief Electoral Officer & E.O Prl. Secy. to Govt., G.A. (Elecs) Dept.
The Special. Chief Secretary, Home (Police) Dept.
The Director General of Police, A.P., Hyderabad.
Secretary to Government (Political), G.A. Department.
Secretary to Government, Legislative Affairs and Justice, Law Department.
Advocate General, High Court of A.P., Hyderabad.
Director of Prosecutions, A.P., Hyderabad.
Public Prosecutor, High Court of A.P., Hyderabad.
All Collectors and District Election Officers.
All Superintendents of Police in the State.
The Advocate-on-Record, A.P. Bhavan, No.1, Ashoka Road, New Delhi-110001.
Public Prosecutors in all districts through the Collectors and District Election Officers.

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Copy to:
Sri K.F. Wilfred, Prl. Secretary, Election Commission of India.
P.S to C.S.
Home (Courts) Department / Law Department.
G.A (Poltical.D) Department.
Legislature (Assembly) Secretariat, Public Gardens, Nampally, Hyderabad.
Legislature .(Council) Secretariat, Public Gardens, Nampally, Hyderabad.

//Forwarded :: By Order//

SECTION OFFICER

(P.T.O for Annexure)

Annexure

Report regarding cases of conviction of sitting members of Parliament/State Legislature, dt: _____

Name of MP/MLA/MLC	Name of the Court which passed the order of conviction	Law and Section(s) under which conviction ordered	Date of conviction Order	Punishment / sentence passed